IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 744 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES

2. To be referred to the Reporter or not? yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge? NO

KIRANKUMAR MADHUSUDAN OZA

Versus

STATE OF GUJARAT

Appearance:

MR RS SANJANWALA for Petitioner

MR RM CHAUHAN, ASSTT. GOVT PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 21/08/98

ORAL JUDGEMENT

1. Heard learned counsel for the petitioner as well as learned AGP.

2. This petition is for issue of a writ of certiorari challenging the order passed by Gujarat Land Revenue Tribunal on 26/11/96 in revision under section 38 of the Gujarat Agricultural Land Ceiling Act against the order of the Deputy Collector, Valsad dated 10/7/95 by

which he has rejected the appeal filed by the petitioner against the order of Mamlatdar (Alt. Ceiling), Umargaon dated 23/5/94 under the said Act holding that the total holdings of the petitioner for the purpose of the Act comes to 62 acres 2.75 gunthas. The controversy seems that one computation made by the Mamlatdar as affirmed by the appellate authority and revisional authorities as prayed for suffers in error on the face of record which may call for interference in exercise of extra ordinary jurisdiction under Article 226.

3. The computation which has finally found place in the order of competent officer under the Ceiling Act in his order dated 23/5/94 can be summed up like this. He computed that petitioner held in all 48 acres 1.25 gunthas of land as on 1/4/76 and as acquired thereafter. The computation included lands comprised in Khata No.9 at village Manda measuring 17 acres 7 gunthas, of Khata No. 104/A measuring 6 acres 28 gunthas at village Manchi, and 10 acres comprised in Khata No. 988 at village Maoli, totalling 33 acres 35 gunthas. These were the lands as declared by the holder petitioner Krishnakumar as on 1/4/76. Further, lands which were included were 8 acres and 22.5 gunthas in Khata No. 125 consisting of petitioner's half share in it at village Manda, and 5 acres 23.5 gunthas as 50% share in Khata No.166 at village Manda, thus making the total 48 acres 1.25 gunthas. The dispute is about inclusion of these two latter holdings.

4. Out of this land, the deduction of 4 acres 4.5 gunthas was allowed considering that these lands have passed from the hands of holder prior to 1/4/76. Thus, the remaining land admeasuring 43 acres 36.5 gunthas was held to have been held by the petitioner consisting of land held as on 1/4/76 as well as the land acquired by him after 1/4/76. The competent officer further held that out of said land 36 acres 11.5 gunthas was the land of higher category of irrigation and as per the Ceiling Rules, it has to be computed at 1.1/2 times of the actual area. Thus, taking one and half times of 36 acres 11.5 gunthas as 54 Acres 17.75 gunthas and adding 7 acres 25 gunthas the remainder of 46 acres 36.5 gunthas, total holding was arrived at 62 acres 27.5 gunthas. Then, he further considered that, as on 1/4/76, the petitioner has not shown whether he has any adult son or he had more than five members as on that date. Thus, considering the entire holding to be one unit, it declared 15 acres 14 gunthas land as surplus land.

5. The petitioner has in the first instance urged

that the competent officer as well as the higher authorities have patently erred in not granting deduction in respect of land not fit for cultivation as has already been held in the very same proceedings at earlier stage and which have become final by order of the Tribunal itself dated 14/2/92.

6. It was pointed out that first computation of holdings was made on 20th March 1981, by which the competent officer by taking the holding at 33 acres 35 gunthas as declared by the petitioner and deducting therefrom 8 acres 4 gunthas, as not includible or exempt, has come to conclusion that applicant held only 25 acres 31 gunthas equivalent to dry crop area admeasuring 38 acres 26.5 gunthas which is within the ceiling limit. The Deputy Collector did issue a notice for revision, but the same was withdrawn on 29/4/87 confirming the order of mamlatdar that there is no surplus land in the hands of the applicants. Against that order, the State preferred revision before the Gujarat Revenue Tribunal which was decided on 14/2/92. The Tribunal observed that the Mamlatdar had deducted the land admeasuring 8 acres 4 gunthas in total from the holdings by holding that 4 acres 24 gunthas land is not fit for cultivation and in land admeasuring 3 acres 20 gunthas, the applicant has relinquished his interest and the same vested in somebody else. In its order, the Tribunal affirmed the finding of the authorities below as to the deductibility of 4 acres 24 gunthas on account of the land being not fit for cultivation. However, it remanded the case back to the competent officer by holding that whether the relinquishment on the basis of which deduction of 3 acres 20 gunthas have been allowed, was of a date prior to the date 1/4/76 or not. Only to that extent, the order of the competent officer was set aside and he was directed to decide the case afresh in light of the aforesaid decision.

7. The order of remand was made on 14/2/92 and 24/4/92, the Mamlatdar by placing reliance on the statement of Talati cum Mantri recomputed the land held by the petitioner as on 1/4/76 which included the lands other than those declared by the petitioner of Khata No. 166 standing in the joint name of Prafulchandra Jaykrishna and applicant admeasuring 11 acres 7 gunthas and of Khata no. 125 admeasuring 17 gunthas 5 gunthas standing in the name of Kamlaben and Kirankumar. As the order dated 24/4/92 had been made without informing the petitioner about the statement of Talati cum Mantri, on appeal, the order was set aside and the case was again remanded back by the Deputy Collector vide his order

dated 20th October 1992.

7. Thereafter , by order dated 23rd May 1994, the Mamlatdar again decided the case of the petitioner under Ceiling Laws and computed the lands held by him as on the date of commencement and lands acquired by him thereafter and declared 15 acres 14 gunthas of land as surplus land. In doing so, while has allowed 3 acres 20 gunthas of land which was earlier considered for deduction on the ground of being relinquished and not held by the petitioner, but the competent officer did not consider that 4 acres 24 gunthas of land has been held as far back as on 28th March 1981 that the said land was not fit for cultivation and was not liable to be included in the computation for ceiling purposes. That finding has been specifically affirmed by the Tribunal in its order dated 14/2/92. That finding of the higher authority was not open to be interfered with or reconsidered by the subordinate authorities. In fact, it appears that the mind has not been applied to this question. This mistake in computation appears to be apparent. The petitioner is entitled to relief on that ground.

8. The petitioner further contends that the computation is otherwise suffering from patent errors. It was urged by the learned counsel that in respect of land held by the mother Kamladevi and applicant Kirankumar, Kamladevi had willed her interest in favour of Fulvatiben who was major at the time of her death and notice of that fact has not been taken and the interest of mother on her death transmitted to Fulvatiben and the petitioner did not acquire any interest therein. Thus, he cannot be considered to have acquired any interest in that land.

9. Firstly, the attention of the Court was drawn to section - 9 of the Act of 1960 which declares that after the appointed day, if on account of gift, purchase, assignment, lease, surrender or any other transfer inter vivos or by partition or succession if land comes into possession of any person or any land held by any person ceases to be exempted land and in consequence, total area held by him exceeds area which he is entitled to hold under section 6 than the acquisition otherwise then by succession or partition shall be invalid and forfeited to the State Government. If the acquisition is by way of succession or partition, or where such excess land was exempted then such excess land shall be deemed to be surplus land held by such persons.

10. Section 26 provides that the procedure of the inquiry in respect of land acquired/transferred in

contravention of section 9, which requires that the Tribunal shall issue a notice to the holders of the land and other interested persons to show cause within one month from the date of service of notice why the acquisition of such excess land should not be declared to be invalid or as the case may be, why excess land should not be declared to be surplus land.

11. Learned counsel for the petitioner contends that the procedure prescribed under section 26 had not been followed before including the said land in the holdings of the petitioner. No notice has been issued either to him or to other persons having interest in the land. This contention in the present case is not open to the petitioner.

12. From the facts stated above, it is apparent that the addition has been made in respect of Khata no. 125 and No.166 in the first instance vide order dated 24/4/92 to the full extent without notice to the petitioner or any other person. That order was challenged and was set aside and the case was remanded back for making an inquiry de novo in the matter by holding that if the Mamlatdar had come to know about the acquisition of land after the appointed day and it is to be included in the computation of land held by any person, he should make an inquiry into the relevant facts about the date and manner of acquisition, from whom it has been acquired and other relevant matters. He also made reference to relevancy of such dates because these dates are relevant for the purpose of considering the holdings as on the date of such acquisition, and also because the holdings on the date of acquisition would determine whether it is to be included in the holdings such person is entitled to retain or to be declared surplus land to be acquired. Thereafter, after the information was made available to the petitioner, the proceedings for computation of holdings and ceiling limit in the hands of the petitioner proceeded further. The proceedings in pursuance of declaration made by the petitioner had not come to an end but the matter was already pending before the competent officer. During the course of those proceedings, having come to know about the later acquisition by the applicant, which the petitioner was otherwise bound to inform in terms of section 6(2), and after having heard the petitioner, the order has been made. There cannot be any grievance that the petitioner has not been given any notice of intended inclusion or he has not been heard on that basis. The petitioner's grievance that the other heirs or interested persons ought to have been given notice who are likely to be affected, has no merit.

Those persons to whom lack of notice is attributed have not challenged the proceedings. More over, as will be presently seen, their rights have not been affected.

13. In respect of Khata No. 125, the petitioner Krushnakumar has claimed that her mother had willed her interest in favour of Fulvatiben, daughter of petitioner and he did not acquire any share in it and therefore, it could not have been included in his holdings and it has affected Fulvatiben's interest, she has not been served with the notice. Apart from the fact that Fulvatiben is not making any grievance in this petition, from the final order dated 23/4/94, I find that only half of the land comprised in Khata No. 125 has been included in the computation of the holding of the petitioner. The facts about this land which are not in dispute are that this Khata originally stood in the name of petitioner's father Madhusudan. He had expired on 25/12/77. The petitioner and his mother were the only heirs of his father as on the date of his death. The land was mutated in the joint name of petitioner and his mother who died on 3rd March 1985. Succession to mother's estate opened on 3rd March 1985. The claim of the petitioner is that the mother had willed her interest in this khata in favour of Fulvatiben. The final determination of land held by the petitioner show that no part of the Khata No. 125 which is relatable to the interest of Kamlaben has been included in the holdings of the petitioner. The interest of father of petitioner Maldhusudan, who died on 15/12/77, devolved on his heirs on that date. It is nobody's case that the father had left any will. In other words, it was case of intestate succession. It is not the case that father's estate did not devolve on Kirankumar or he has lost interest in any manner. On intestate succession, heirs take equal shares per capita. Thus, the interest of Krushnakumar to the one half as on the date of death of his father came to be vested in him, and other half in his mother. It has been claimed that mother has willed her interest in the property in favour of Fulvatiben. That could only relate to one half share in Khata No.125 and nothing beyond that. The learned competent officer had accepted that position and has only included half the interest in Khata No. 125 referable to Kirankumar's share which he acquired on his father's death. Thus, no interest of Fulvatiben has been affected by this order nor any land held by Fulvatiben has been included in the said computation. It cannot be said that there is any violation of the procedure prescribed by law affecting the rights of any person by inclusion of this land in the computation of holdings of the petitioners under the Hindu Law.

14. In the like manner, the petitioner contends that khata No. 166 was held by his father jointly with Prafulbhai and after Madhusudan's death, Kamlaben's name was substituted in his place. Thus, it was in joint name of Prafulbhai and Kamlaben. Now his mother's share has been included in it which has been included in his holdings. About this Khata, the competent officer clearly noted that, as on 1/4/76, Khata stood in the joint name of father of the petitioner and one Prafulbhai. On the death of the petitioner's father on 25/12/77, name of Kamlaben and on death of Kamlaben on 3rd March 1985, name of petitioner came to be mutated. Thus, the interest of family in property continued. Entry made in that regard has also been shown to the Court which takes notice of the fact that the petitioner was the sole surviving heir of Kamlaben and the property has now been mutated in his name on the death of Kamlaben. No will in respect of this property has been claimed. Whatever view may be taken of the event, there cannot be any other conclusion that as on the date when the order was made, the applicant was the only holder of the land to the extent of 50% of Khata No.166 on the date his mother died. The succession to the interest of Madhusudan opened on 25/12/77, Kamlaben and Kirankumar being the only heirs they succeeded to the property in equal shares. Assuming on the basis that Kirankumar did not acquire any interest because name of Kamlaben only was entered in the records as successor to Madhusudan jointly with Prafulkumar. On Kamlaben's death on 3rd March 1985, he succeeds to the property of her mother as his sole surviving heir. It is not the case of the petitioner either in respect of this Khata that this property has also been willed in favour of Fulvatiben or any one else. Either one fourth of the interest in Khata No. 166 vested in the petitioner on 25/12/77 and remainder in him on 3rd March 1985 or the entire interest in Khata No.166 vested in Kirankumar latest by 3rd Mach 1985. He being a joint holder of the land only half of the land has been included and no other interest has been included in respect of this land. The contention has in fact been founded on wrong premise that entire of holdings of Khata Nos. 125 and 166 have been included.

15. This being the position, there cannot be said to be any error much less error apparent on the face of record requiring any interference by issuance of writ of certiorari in this regard.

16. Thus, the contention about the inclusion of half share in lands comprised in Khata No.125 and 166 in the holdings of the petitioner are rejected.

17. Lastly, it was contended by the learned counsel that, at any rate, the competent officer were bound to consider the total number of members of the petitioner's family as on the date of subsequent acquisition also as and when they became liable to be included in his holdings and it is on that basis the question of unit entitlement had to be considered.

18. There is some force in this contention. From the orders of the competent officer and Tribunal, it is found that the unit of the petitioner has been considered as on 1/4/76 and no efforts have been made to consider the unit at later date. It may not be lost sight of the fact that the total area held in the hands of the petitioners is not as on 1/4/76, but it comprises of the lands held by him as on 1/4/76 as well as acquisitions on later dates. The relevant inquiry ought to be as on what date the petitioner became the holder of excess land and at that time, the question arises of declaration of surplus area with reference to the unit to which he was entitled to for the purpose of computation of land and computation of surplus area to be surrendered to the State. That inquiry does not appear to have been held at all notwithstanding apparent fact that the total holdings including the holdings of the petitioner as on 1/4/76 as well as the lands acquired on later dates.

19. In the aforesaid circumstances, the petition is partly allowed. The impugned orders dated 23/5/94 and 10/7/95 and 26/11/96 are all quashed and set aside to the extent indicated above. The Competent Officer is directed to reconsider the ceiling area held by the petitioner with reference to each date namely as on 1/4/76 and on the subsequent dates of acquisition in light of aforesaid discussion and decide the surplus area in the hands of the petitioner as per that computation and proceed further. Rule is made absolute accordingly. There shall be no orders as to costs.

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